

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**NOXGEAR, LLC,**

**Plaintiff,**

**v.**

**Civil Action 2:24-cv-2859  
Judge Algenon L. Marbley  
Magistrate Judge Jolson**

**E-FILLIATE, INC.,**

**Defendant.**

**REPORT AND RECOMMENDATION**

This matter is before the Court on a Show Cause Order (Doc. 3). On May 23, 2024, Plaintiff filed this action. (Doc. 1). Yet since that date, Plaintiff has not effected service on Defendant. As a result, the Court issued a Show Cause Order on September 13, 2024, giving Plaintiff fourteen days to show “why this action should not be dismissed and why an extension of time to effect service should be allowed.” (Doc. 3). To date, Plaintiff has not responded to that Order.

Federal Rule of Civil Procedure 4(m) provides in relevant part:

If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

In short, over ninety days have passed, and Plaintiff has not served Defendant. Nor has Plaintiff shown why the time for service should be extended. As a result, the Undersigned **RECOMMENDS** that this action be **DISMISSED without prejudice**.

IT IS SO ORDERED.

Date: October 1, 2024

/s/ Kimberly A. Jolson  
KIMBERLY A. JOLSON  
UNITED STATES MAGISTRATE JUDGE

**PROCEDURE ON OBJECTIONS**

If any party objects to this Report and Recommendation, that party may, within fourteen (14) days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A Judge of this Court shall make a *de novo* determination of those portions of the Report or specified proposed findings or recommendations to which objection is made. Upon proper objections, a Judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence, or may recommit this matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the District Judge review the Report and Recommendation *de novo* and also operates as a waiver of the right to appeal the decision of the District Court adopting the Report and Recommendation. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).